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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,224	06/01/2001	Norman Feuer	042965/0105	2403

27433 7590 07/20/2004

FOLEY & LARDNER
321 NORTH CLARK STREET
SUITE 2800
CHICAGO, IL 60610-4764

EXAMINER

YOUNG, JOHN L

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/872,224

Applicant(s)

FEUER ET AL.

Examiner

John L Young

Art Unit

3622

My

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JOHN LEONARD YOUNG, ESQ.
PRIMARY EXAMINER

John Leonard Young
7-12-2001

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

NON-FINAL REJECTION

DRAWINGS

1. This application has been filed with drawings that are acceptable for examination and publication purposes. The review process for drawings that are included with applications on filing has been modified in view of the new requirement to publish applications at eighteen months after the filing date of applications, or any priority date claimed under 35 U.S.C. §§119, 120, 121, or 365.

CLAIM REJECTIONS — 35 U.S.C. §103(a)

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over

Nemirofsky 5,412,416; class 725/36 (05/02/1995) (herein referred to as "Nemirofsky").

As per claim 1, Nemirofsky (the ABSTRACT; FIG. 1 through FIG. 8F; col. 1, ll. 5-67; col. 2, ll. 1-67; col. 3, ll. 1-67; col. 4, ll. 1-67; and whole document) shows "A networked computer broadcasting system with provision for broadcasting multiple broadcasts, where advertising opportunities arising out of such broadcasts are to be sold, where at least some of the broadcasts are organized into one or more series of related broadcasts that are broadcast at weekly or other relatively periodic intervals, and where at least some of the series of broadcasts are further organized into one or more groups of related series of broadcasts. . . ." and implicitly shows the remaining elements and limitations of claim 1.

Nemirofsky lacks explicit disclosure of "a broadcasting system that receives multiple broadcasts and transmits them over the network to computers containing tuner software systems with provision enabling their users to receive at least one of the broadcasts: an advertisement or other message insertion system that can replace or supplement portions of any of the broadcasts with advertisements or other messages, thereby creating advertising opportunities; a traffic system that automates the selling of the advertising opportunities associated with the broadcasts to advertisers and that permits the advertising opportunities to be collected into packages for sale, the traffic system forming packages in several different ways which maybe used in combination with each other, including selecting advertising opportunities arising in one or more series, and selecting advertising opportunities arising in one or more groups; and a

coordination system which controls the ordering of advertisement or other message insertion by the insertion system and which itself is controlled by broadcast logs generated by the traffic system. . . .”, even though the cited disclosure of Nemirofsky implicitly shows same.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Nemirofsky (the ABSTRACT; FIG. 1 through FIG. 8F; col. 1, ll. 5-67; col. 2, ll. 1-67; col. 3, ll. 1-67; col. 4, ll. 1-67; and whole document) implicitly shows “a broadcasting system that receives multiple broadcasts and transmits them over the network to computers containing tuner software systems with provision enabling their users to receive at least one of the broadcasts: an advertisement or other message insertion system that can replace or supplement portions of any of the broadcasts with advertisements or other messages, thereby creating advertising opportunities; a traffic system that automates the selling of the advertising opportunities associated with the broadcasts to advertisers and that permits the advertising opportunities to be collected into packages for sale, the traffic system forming packages in several different ways which maybe used in combination with each other, including selecting advertising opportunities arising in one or more series, and selecting advertising opportunities arising in one or more groups; and a coordination system which controls the ordering of advertisement or other message insertion by the insertion system and which itself is controlled by broadcast logs generated by the traffic system. . . .”; and it would have been obvious to modify and interpret the disclosure of

Nemirofsky cited above as showing "a broadcasting system that receives multiple broadcasts and transmits them over the network to computers containing tuner software systems with provision enabling their users to receive at least one of the broadcasts: an advertisement or other message insertion system that can replace or supplement portions of any of the broadcasts with advertisements or other messages, thereby creating advertising opportunities; a traffic system that automates the selling of the advertising opportunities associated with the broadcasts to advertisers and that permits the advertising opportunities to be collected into packages for sale, the traffic system forming packages in several different ways which maybe used in combination with each other, including selecting advertising opportunities arising in one or more series, and selecting advertising opportunities arising in one or more groups; and a coordination system which controls the ordering of advertisement or other message insertion by the insertion system and which itself is controlled by broadcast logs generated by the traffic system. . . ." because modification and interpretation of the cited disclosure of Nemirofsky would have provided *"an effective and cost-efficient point-of-purchase promotional medium. . . ."* (see Nemirofsky (col. 2, ll. 5-10)), based on the motivation to modify Nemirofsky so as to *"[provide] a method and apparatus for distributing and broadcasting a customized video program . . . [of advertisements]."* (See Nemirofsky (col. 2, ll. 5-22)).

As per claims 2-26, Nemirofsky shows the method of claim 1 and subsequent

base claims depending from 1.

Nemirofsky (the ABSTRACT; FIG. 1 through FIG. 8F; col. 1, ll. 5-67; col. 2, ll. 1-67; col. 3, ll. 1-67; col. 4, ll. 1-67; and whole document) implicitly shows the elements and limitations of claims 2-26.

Nemirofsky lacks explicit recitation of the elements of claims 2-26, even though Nemirofsky implicitly shows same.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Nemirofsky (the ABSTRACT; FIG. 1 through FIG. 8F; col. 1, ll. 5-67; col. 2, ll. 1-67; col. 3, ll. 1-67; col. 4, ll. 1-67; and whole document) implicitly shows the elements and limitations of claims 2-26, and it would have been obvious to modify and interpret the disclosure of Nemirofsky cited above as implicitly showing the elements and limitations of claims 2-26 because modification and interpretation of the cited disclosure of Nemirofsky would have provided "*an effective and cost-efficient point-of-purchase promotional medium. . . .*" (see Nemirofsky (col. 2, ll. 5-10)), based on the motivation to modify Nemirofsky so as to "[provide] a method and apparatus for distributing and broadcasting a customized video program . . . [of advertisements]." (See Nemirofsky (col. 2, ll. 5-22)).

CONCLUSION

3. Any response to this action should be mailed to:

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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Any response to this action may be sent via facsimile to either:

(703)305-7687 (for formal communications EXPEDITED PROCEDURE) or

(703) 305-7687 (for formal communications marked AFTER-FINAL) or

(703) 746-7240 (for informal communications marked PROPOSED or DRAFT).

Hand delivered responses may be brought to:

Seventh Floor Receptionist
Crystal Park V
2451 Crystal Drive
Arlington, Virginia.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Young who may be reached via telephone at (703) 305-3801. The examiner can normally be reached Monday through Friday between 8:30 A.M. and 5:00 P.M.

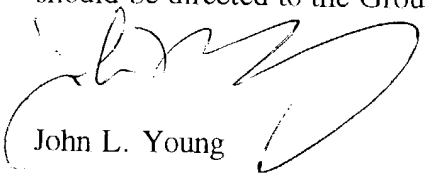
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, may be reached at (703) 305-8469.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.



John L. Young

JOHN LEONARD YOUNG, ESQ.
PRIMARY EXAMINER

Primary Patent Examiner

July 12, 2004